

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 24, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERNARD VINCENT  
MONTGOMERY,

Defendant.

No. 2:96-CR-02042-LRS-1

ORDER GRANTING MOTION FOR  
COMPASSIONATE RELEASE

BEFORE THE COURT is Defendant's construed Motion for Compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), ECF No. 341, from Bernard Montgomery. The Government was represented by Assistant U.S. Attorney Benjamin Seal. After the motion was filed *pro se*, attorney Colin Prince was appointed to represent Mr. Montgomery. This matter was heard on August 10, 2020 without oral argument. The Court, having reviewed the record, the parties' briefing, and the relevant authorities, is fully informed. For the reasons discussed below, Defendant's Motion for Compassionate Release, ECF No. 341, is GRANTED.

## BACKGROUND

On July 29, 1996, a jury found Defendant guilty of charges related to the manufacture, distribution, and importation of methamphetamine. ECF No. 143. On April 28, 1997, Defendant was sentenced to life in prison based on two prior felony convictions, as required by statute at the time of sentencing. ECF No. 180.

Defendant filed an undated compassionate release request with the Bureau of Prisons. ECF No. 341 at 2-5. Defendant is now 82 years old and suffers from type 2 diabetes, cataracts, hypertension, and bowel problems. ECF No. 341 at 1-2. In addition to his serious medical conditions, Defendant has served 24 years of a life sentence. Defendant seeks a reduction in sentence based on his medical condition and personal circumstances. ECF No. 341. Defendant indicates that if released, he will have a place to live with his brother in New Mexico and that he will have access to financial support and medical treatment. ECF No. 341 at 4, 6.

The Government argues that Defendant has not exhausted administrative remedies and that Defendant has not provided legally sufficient reasons warranting a sentence reduction. ECF No. 345.

## DISCUSSION

### A. Eligibility for Compassionate Release

Federal courts have the statutory authority to modify an imposed term of imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)

1 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).  
2 Until recently, motions for compassionate release could only be brought to the  
3 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).  
4 However, after the December 2018 passage of the First Step Act, defendants may  
5 now bring their own motions for compassionate release after exhausting  
6 administrative remedies within the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A)  
7 (2018).

8 Attached to Defendant's motion is a copy of a petition to the warden of FCI  
9 Beaumont requesting compassionate release, although his petition is undated. ECF  
10 No. 93 at 2. The Government asserts that the Bureau of Prisons has no record of  
11 such a request in its database and that the undated petition attached to Defendant's  
12 motion is insufficient to establish that Defendant exhausted his remedies. ECF No.  
13 345 at 2, 5-10. On reply, Defendant submitted a certified mail receipt showing that  
14 on June 28, 2019, the warden of FCI Beaumont received mail from the Defendant.  
15 The Court finds that, under the circumstances, this is sufficient to establish that  
16 Defendant petitioned the Bureau of Prisons and that more than 30 days have  
17 passed. Thus, the motion for compassionate release is properly before the Court.

18 A defendant may be eligible for compassionate release: (1) if the Court finds  
19 "extraordinary or compelling reasons" to warrant a sentence reduction; or (2) if the  
defendant is at least 70 years old, has served at least 30 years in prison pursuant to

1 a sentence imposed for the offense for which the defendant is currently imprisoned,  
2 and the defendant is determined not to pose a risk of danger to the community. 18  
3 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find  
4 that a sentence reduction is “consistent with applicable policy statements issued by  
5 the [United States] Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The  
6 Sentencing Guidelines instruct that the Court should consider the sentencing  
7 factors set forth in 18 U.S.C. § 3553(a) when deciding a motion for compassionate  
8 release, and that the Court should not grant a sentence reduction if the defendant  
9 poses a risk of danger to the community, as defined in the Bail Reform Act.  
10 U.S.S.G. § 1B1.13.

11 Defendant is not eligible for compassionate release under subsection (2) of  
12 18 U.S.C. § 3582(c)(1)(A) because although he is over 70 years old, he has not  
13 served 30 years in prison for his current sentence. Thus, the question before the  
14 Court is whether extraordinary and compelling reasons exist to grant Defendant’s  
15 request for compassionate release.

#### 16 **B. Extraordinary and Compelling Reasons**

17 Defendant contends that “extraordinary and compelling reasons” justify a  
18 sentence reduction. ECF No. 341, 350. The First Step Act did not define  
19 “extraordinary and compelling reasons” warranting a sentence reduction, but the  
compassionate release statute directs the Court to consider the Sentencing

1 Commission's policy statements when deciding compassionate release motions.

2 18 U.S.C. § 3582(c)(1)(A).

3       The Sentencing Commission's policy statement on sentence reduction  
4 mirrors the language of the compassionate release statute, but it has not yet been  
5 updated to reflect the procedural changes implemented by the First Step Act.  
6 U.S.S.G. § 1B1.13. "While that particular policy statement has not yet been  
7 updated to reflect that defendants (and not just the [Bureau of Prisons ("BOP")])  
8 may move for compassionate release, courts have universally turned to U.S.S.G. §  
9 1B1.13 to provide guidance on the 'extraordinary and compelling reasons' that  
10 may warrant a sentence reduction." *United States v. McGraw*, No. 2:02-cr-00018-  
11 LJM-CMM, 2019 WL 2059488, at \*2 (S.D. Ind. May 9, 2019) (gathering cases).

12       The sentence reduction policy statement outlines four categories of  
13 circumstances that may constitute "extraordinary and compelling reasons" for a  
14 sentence reduction: (1) the defendant suffers from a medical condition that is  
15 terminal or substantially diminishes the defendant's ability to provide self-care in a  
16 correctional environment; (2) the defendant is at least 65 years old, is experiencing  
17 a serious deterioration in health due to the aging process, and has served at least 10  
18 years or 75% of his or her term of imprisonment, whichever is less; (3) family  
19 circumstances involving the death or incapacitation of the caregiver of the  
defendant's minor child or the incapacitation of the defendant's spouse or

1 registered partner; or (4) other reasons, other than or in combination with the other  
2 listed circumstances, that are extraordinary and compelling. U.S.S.G. § 1B1.13,  
3 Application Note 1.

4 Here, Defendant moves for compassionate release on the grounds that his  
5 age, diabetes, and other physical ailments combined with the risk of contracting  
6 COVID-19 constitute “extraordinary and compelling reasons” for a sentence  
7 reduction. ECF No. 341, 350 at 47-56. Defendant is 82 years old and his medical  
8 records indicate he suffers from type 2 diabetes, hypertension, cataracts, damage to  
9 his teeth, benign hyperplasia of the prostate, dementia without behavioral  
10 disturbance, and possible colon issues. ECF Nos. 341, 350-1. Defendant indicates  
11 he has difficulty managing his blood sugars which affects his sleep, appetite, and  
12 balance. ECF No. 341 at 2. He walks with a shuffle, leans, and frequently feels  
13 off-balance, causing him to fall. ECF No. 341 at 2. He worked for 22 years for the  
14 Federal Prison Industries but stopped working due to shakiness and falling down.  
15 ECF No. 341 at 2. He states he has difficulty controlling his bowels and cataracts  
16 make his vision blurry. ECF No. 341 at 2. He takes numerous medications,  
17 including medication for type 2 diabetes and high blood pressure. ECF No. 341 at  
18 3.

18 The Government argues only that Defendant does not qualify for  
19 compassionate release under subsection (1) of the Sentencing Commission policy

1 statement, noting that Defendant does not have a terminal illness or a medical  
2 condition that substantially diminishes his ability to provide self-care in the  
3 environment of a correctional facility. ECF No. 345 at 11-12. Even assuming for  
4 the sake of argument that the Government is correct (and it is arguable that  
5 Defendant's ability to provide self-care for his conditions is substantially  
6 diminished, *see* ECF No. 350 at 55-56), the Government does not address the  
7 application of subsections (2) or (4) of the sentence reduction policy guidelines.  
8 ECF No. 345.

9 The Court concludes that Defendant's advanced age and deteriorating  
10 medical condition, and the fact that he has been imprisoned for 24 years, constitute  
11 extraordinary and compelling reasons for compassionate release under subsection  
12 (2) of the sentence reduction policy guidelines. Even if his age and medical  
13 condition were not sufficiently extraordinary or compelling, the risk associated  
14 with contracting COVID-19 while in prison in combination with his age and  
15 medical condition support a reduction in sentence under subsection (4). According  
16 to the CDC, Defendant's advanced age and type 2 diabetes cause him to be at  
17 increased risk of severe illness from COVID-19, and hypertension may increase  
18 risk, as well. Centers for Disease Control and Prevention, *People at Increased*  
19 *Risk*, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html)  
[precautions/index.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html) (last visited August 13, 2020). As observed in Defendant's

1 reply brief, numerous courts have recognized that the risk of significant  
2 complications from diabetes and exposure to COVID-19 can be a basis for  
3 compassionate release. ECF No. 350 at 54. Thus, the Court finds extraordinary  
4 and compelling reasons exist which justify compassionate release.

5 **C. 18 U.S.C. § 3553 Factors and Danger to Community**

6 Under 18 U.S.C. § 3582(c)(1)(A) and the Sentencing Commission policy  
7 statement, the Court should consider the sentencing factors set forth in 18 U.S.C. §  
8 3553(a) when deciding a motion for compassionate release. The Court should not  
9 grant a sentence reduction if the defendant poses a risk of danger to the  
10 community, as defined in the Bail Reform Act. U.S.S.G. § 1B1.13.

11 The Court has reviewed all the factors to be considered in imposing a  
12 sentence, 18 U.S.C. § 3553(a), and does not find any one factor or combination of  
13 factors precludes compassionate release. Although the Defendant's offense was  
14 serious and he had prior criminal history, it is noted that sentencing laws have  
15 changed and a defendant with the same history facing sentencing for the same  
16 conviction today would face a mandatory minimum of 25 years, not life  
17 imprisonment. Defendant has served 24 years in prison which is significant time  
18 and is just punishment. His disciplinary report shows no infractions during this  
19 term of imprisonment. ECF No. 350-1. Mr. Montgomery has an impressive 22-  
year work history while in prison and has taken classes to better himself. ECF No.



1 341 at 2; ECF No. 350 at 30. Further incarceration is not necessary for deterrence  
2 nor is it necessary to protect the public. Thus, the § 3553(a) sentencing factors  
3 favor resentencing Mr. Montgomery to time served.

4 Furthermore, Defendant does not now present a risk of danger to the any  
5 person or the community as articulated in 18 U.S.C. § 3142(g). Defendant's  
6 advanced age and medical condition have alleviated any risk Defendant previously  
7 posed to the community.

### 8 CONCLUSION

9 The Court finds that Mr. Montgomery qualifies for compassionate release  
10 because his advanced age, physical ailments, and the current COVID-19 pandemic  
11 constitute "extraordinary and compelling reasons" warranting a sentence reduction,  
12 and the reduction is consistent with applicable policy statements issued by the  
13 Sentencing Commission. *See* 18 U.S.C. § 3582(c)(1)(A). Further, the Court finds  
14 that a time-served sentence is "sufficient but no greater than necessary" to comply  
15 with the purposes set forth by Congress and the Sentencing Commission, and that  
16 Mr. Montgomery is not a danger to any person or the community.


17 Accordingly,

- 18 1. Defendant's construed Motion for Compassionate release pursuant to 18  
19 U.S.C. § 3582(c)(1)(A), **ECF No. 341**, is **GRANTED**.

2. The Court will enter an AMENDED Judgment imposing a sentence of “time served.” Additionally, Defendant is ordered to self-quarantine for a minimum of 14 days upon arrival at his residence.
3. Upon release, Defendant shall reside with his brother in Tijeras, New Mexico. With consideration for Defendant’s medical condition and necessary medical treatment (including medication and prescriptions), the United States Bureau of Prisons shall promptly arrange for the release of the Defendant from custody and provide him with transportation to his residence in Tijeras, New Mexico, according to 18 U.S.C. § 3624(d). If Defendant needs an attendant for travel purposes, the Bureau of Prisons shall communicate with Defendant’s family so proper arrangements may be made.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and furnish copies to counsel, the United States Marshal Service, and the Probation Office.

**DATED** August 24, 2020.

  
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LONNY R. SUKO  
Senior United States District Judge